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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,125	11/29/2000	Masayuki Arai	P20247	9044
7055	7590	06/28/2005	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			HENN, TIMOTHY J	
			ART UNIT	PAPER NUMBER
			2612	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/725,125

Applicant(s)

ARAI, MASAYUKI

Examiner

Timothy J. Henn

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 4-7.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 08 June 2005 have been fully considered but they are not persuasive. Applicant's amend claim 7 to include the limitations of claims 2 and 3 and argue that Arai, Kawahara and Yamamoto do not disclose storing a value corresponding to a wiper position of a digital potentiometer upon the loss of electrical power and recommencing the output of the remote diaphragm control signal upon restoring electrical power. However, as explained in the rejection of claims 2, 3 and 7 Arai discloses a diaphragm control apparatus while Kawahara teaches storing an aperture value or "diaphragm control signal" in memory so that the diaphragm can be restored to a set value after a power supply interruption allowing diaphragm control to be conducted without error (c. 6, l. 60 - c. 7, l. 32). While Arai in view of Kawahara discloses storing a diaphragm control signal in order to recommence diaphragm control after a power interruption, Arai in view of Kawahara does not disclose the use of a digital potentiometer to perform such control. However, providing diaphragm control through the use of potentiometers is known in the art and is disclosed by Yamamoto (figure 2; c. 3, ll. 44-48).

While it is admitted that Arai, Kawahara and Yamamoto do not disclose the use of a potentiometer which is a digital potentiometer, the examiner had used Official Notice to provide this feature. In response to Applicant's arguments, the examiner directs Applicants to USP 6,201,491 by Brunolli et al. or USP 5,495,245 by Ashe which provides evidentiary support of the examiners Official Notice statement. Specifically,

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Brunolli discloses in column 1, lines 12-25 that digital potentiometers are replacing analog potentiometers because they are "smaller, more easily and accurately set, are controllable remotely and are becoming lower in cost". Ashe discloses a voltage scaling DAC which is used as a potentiometer and can replace mechanical potentiometers (c. 1, ll. 17-30). Since it is known to use digital potentiometers in place of analog potentiometers as noted by the examiner in the use of Official Notice statement and backed up by the Brunolli and Ashe references, Applicant's arguments that the use of a digital potentiometer would not be obvious in light of the Arai, Kawahara and Yamamoto reference is not persuasive. Therefore the after final amendment does not place the application in condition for allowance and will not be entered.

### ***Conclusion***

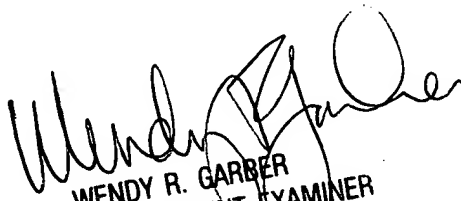
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Henn whose telephone number is (571) 272-7310. The examiner can normally be reached on M-F 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy R. Garber can be reached on (571) 272-7308. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TJH  
6/20/2005

  
WENDY R. GARBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600